

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF THE)	
REASONABLENESS OF THE DEMAND SIDE)	CASE NO.
MANAGEMENT PROGRAMS AND RATES OF)	2017-00097
KENTUCKY POWER COMPANY)	

ORDER

This matter arises upon the motion of Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Walmart") filed March 24, 2017, for full intervention. As a basis for its motion to intervene, Walmart states that it is a large commercial customer of Kentucky Power Company ("Kentucky Power"), with multiple facilities in Kentucky that are served by Kentucky Power. Walmart further states that any modification to Kentucky Power's rates has the potential to impact Walmart's operations in Kentucky.

Based on the motion to intervene and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a Commission case is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.¹ The Court of Appeals has held that the Commission's discretion to grant or deny a motion for intervention is not unlimited, and has enumerated the limits on the Commission's discretion, with one arising under statute, the other under regulation.² The statutory

¹ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

² *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007).

limitation, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”³

The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11)(a), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending motion to intervene, we find Walmart is a customer of Kentucky Power, but has offered no factual basis to justify its request since it has not demonstrated that it is likely to assist the Commission in rendering its decision. Therefore, Walmart lacks the necessary interest in the DSM programs provided by Kentucky Power sufficient to justify intervention. The only interest that Walmart has in the DSM rates and service of Kentucky Power is as a commercial customer with a generalized interest in DSM service. That interest is too remote to justify intervention here.

Further, the instant proceeding arises not from an application filed by Kentucky Power, but from an Order issued by the Commission on its own motion to investigate the reasonableness of increased spending on DSM programs. That increase in spending, which is now \$6 million annually, was part of a non-unanimous settlement agreement approved by our October 7, 2013 Order in conjunction with the approval of Kentucky Power’s acquisition of an interest in the Mitchell Generating Station in Case No. 2012-

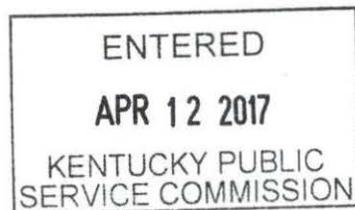
³ *Id.* at 3.

00578.⁴ Walmart was not a party to that case and was not a signatory to the non-unanimous settlement agreement.

Walmart will have ample opportunity to participate in this proceeding even though it is not granted intervenor status. It can review all public documents filed in this case and monitor the proceedings via the Commission's website at the following web address: https://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?Case=97. In addition, Walmart may file comments as frequently as it chooses, and those comments will be entered into the record of this case. Finally, if a formal evidentiary hearing is held, Walmart will be provided an opportunity at the beginning to present any information that it wishes for the Commission's consideration in this matter.

IT IS HEREBY ORDERED that Walmart's motion to intervene is denied.

By the Commission



ATTEST:


Executive Director

⁴ Case No. 2012-00578, *Application of Kentucky Power Company for (1) a Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred In Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 7, 2013).

*Joe F Childers
Joe F. Childers & Associates
300 Lexington Building
201 West Short Street
Lexington, KENTUCKY 40507

*Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

*Honorable Kurt J Boehm
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OHIO 45202

*Rebecca W Goodman
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Office of Rate
700 Capitol Avenue
Suite 20
Frankfort, KENTUCKY 40601-8204

*Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY 41101

*Kentucky Power Company
Kentucky Power Company
855 Central Avenue, Suite 200
Ashland, KY 41101

*Kenneth J Gish, Jr.
Stites & Harbison
250 West Main Street, Suite 2300
Lexington, KENTUCKY 40507